

## **REMARKS**

Applicant acknowledges receipt of, and extends thanks for, the Examiner's consideration of this Application provided in the Final Office Action dated March 1, 2010. In response thereto, these remarks are submitted under 37 C.F.R. 1.116. Reconsideration and withdrawal of the final rejection of Claims 26-49 is respectfully requested pursuant to 37 C.F.R. 1.116.

### **1. The rejection of Claims 26-34, 36-45 and 47 under 35 USC 103(a) over Straub (USP5873882) in view of Kocak (USP 4705511) :**

This ground of rejection should be withdrawn and the claims allowed for at least the following reasons.

The Final Office Action dated March 1, 2010 contains several erroneous and unsupported findings concerning the Straub reference. The Final Office Action first asserts, at page 3, that the "working head...[has]...an end wall capping...said cylindrical bore at said distal end of said working head", with reference to the stator (14) of Straub. In this context, the Final Office Action invokes the definition of the noun "cap" as a "summit; top; acme.cap." Inspection of the specification and drawings of Straub, particularly Fig.7 thereof, reveals that the stator 14 has an open distal end, as seen near the terminus of the pointer emanating from label (16) in Fig.7 Straub. This distal open end is not closed, but rather entirely open as a continuation of the cylindrical bore in the interior of the stator (14). Furthermore, the Examiner's invocation of a definition of the noun "cap" arbitrarily ignores the clear recitation of the verb form "capping" within claim 26. As "capping" constitutes a verb form with an object, the ordinary definition of "capping" must be applied, for example "*providing or covering with, or as if with, a covering or top; or serving as a covering or top to; overlying,*" which ordinary definition is likewise obtainable from the same dictionary

sources cited by the Final Office Action. Thus, Straub utterly fails to show or suggest an end wall capping the cylindrical bore at the distal end of the working head.

The Final Office Action further asserts, at page 3, that there is "a hole in said end wall." This finding is also unsupported by evidence. As there is no extant end wall for the stator 14 disclosed in Straub, it follows that there cannot exist any hole for the guide wire. Thus, this finding of fact also stands unsupported by evidence.

In further assertion, the Final Office Action, at page 4, asserts that a distal end of drive shaft 32 of Straub "abuts said end wall," and that the flexible transport screw has a distal end "configured to rotate relative to said end wall (element 32 rotates relative to element 14 C4 L1-15)". These finding also stand unsupported by evidence. Fig. 7 of Straub clearly depicts the drive shaft element 32 passing entirely through the stator 14 and extending beyond the distal end of the stator 14. Indeed, the drive shaft extends further yet, into a recess/bore within the rotor 16, and the distal end of the drive shaft 32 abuts rotor 16 as clearly shown in this drawing figure of Straub. It is readily understandable from this drawing Fig.7 of Straub and its accompanying description that the connection between this protruding distal part of drive shaft 32 and the rotor 16 functions to transmit the rotation of the drive shaft 32 (1:1) to the rotor 16. Explicit description of this operation lies at Column 5, lines 1-5 of Straub. A plan view is shown in Fig.6 to include portions of the rotor 16 around the outer circumference of the stator 14. The Straub reference directly contradicts these findings of fact set forth in the Final Office Action.

The Final Office Action also asserts, at page 4, that the "flexible transport screw distal part...[has]...sharp edges (fig. 8)". No evidence supports this finding of fact. Straub, at Fig. 8, shows the cross-section of the drive shaft 32 to be rectangular-form. There is nothing to indicate or suggest sharpened, knife-like edges at any portion of the drive shaft 32 -- it does not have sharp edges. As explained in the immediately preceding paragraph of this response, the distal end of drive shaft 32 is connected inside rotor 16. Given the fact that the entirety of this reference relates to the comminution and shearing produced by the

relative motion between rotor 16 and stator 14 (e.g. see Col.3, line 20 Straub: "a cutting tool which consists of a stator 14 and a rotor 16"), this finding also stands unsupported by evidence.

None of the remaining references (Kocak, Evans et al, and Clement et al.) advanced against the present claims within the Final Office Action are curative of the deficiencies of Straub discussed above. For the reasons explained above, independent claims 26 and 47 define over Straub in view of Kocak and should be allowed. As dependent claims 27-46 depend on and incorporate independent claim 26, they are likewise allowable along with claim 26. On this basis, immediate withdrawal of this ground of rejection and indication of allowability of claims 26-47 are respectfully requested, so that an unnecessary Appeal may be avoided. Upon the filing of an Appeal, Applicant reserves the right to separately argue claims 27-34, 36-45, as the additional assertions of findings on pages 5-7 Final Office Action, related to claims 27-34 and 36-45, also contain numerous errors and inaccuracies.

**2. The rejection of Claims 35, and 48-49 under 35 USC 103(a) over Straub (USP5873882) in view of Kocak (USP 4705511), further in view of Evans et al (USP 5312425) :**

The arguments advanced against Straub, immediately above in subsection 1 of this reply, are likewise applicable in their entirety on behalf of independent claim 48. For the same reasons, independent claim 48 defines over Straub in view of Kocak and Evans et al.

As dependent claim 35 depends on and incorporates independent claim 26, and as dependent claim 49 depends on and incorporates independent claim 48, they are both likewise allowable along with their independent claim. On this basis, immediate withdrawal of this ground of rejection and indication of allowability of claims 35, 48-49 are respectfully requested, so that an unnecessary Appeal may be avoided. Upon the filing of an Appeal, Applicant reserves the right to separately argue claims 35, 48-49, as the additional assertions of findings on pages 7-9 Final Office Action, related to claims 35 and 48-49, also contain errors and inaccuracies.

**3. The rejection of Claim 46 under 35 USC 103(a) over Straub (USP5873882) in view of Kocak (USP 4705511), further in view of Clement et al (USP 6565588) :**

As dependent claim 46 depends on and incorporates independent claim 26, it is likewise allowable along with independent claim 26, as explained above within subsection 1 of this response.

**4. Claims 26-49 also define over all of the remaining references of record:**

Independent claims 26, 47 and 48 define over the remaining references of record, as was explained in Applicant's remarks, pp. 12-13 of the response filed on January 15, 2010.

Accordingly, independent claims 26, 47 and 48, and consequently their respective dependent claims 27-46 and 49 that depend on and further limit them, are all allowable over the references of record.

### **CONCLUSION**

All of Applicants' Claims 26-49 as currently presented are in condition for allowance, and favorable notice of allowability and immediate passage of this Application towards issuance without further delay are respectfully solicited. Entry of the accompanying remarks into the record is respectfully requested. No extension of time fees are believed due or necessary to accompany this response to the March 1, 2010 Office Action. In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 11-0223).

The Examiner is invited to contact Applicant's representative at (732)634-7634 if he believes that such communication may further advance and facilitate the efficient handling of the present Application or further simplify the issues for Appeal.

Respectfully submitted,

**s/Matthew B. Dernier/**

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